File: (b) (6) – Kansas City, MO Date: AUG 10 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Mohammad Abdelaziz
Assistant Chief Counsel

APPLICATION: Termination; continuance

In a decision dated May 25, 2017, an Immigration Judge denied the respondent's request for a continuance, found that she was removable as charged, and ordered her removed from the United States. The respondent, a native and citizen of Ecuador, has appealed from this decision. The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2018). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On January 26, 2007, the respondent was convicted of production of a controlled substance under section 195.211 of the Missouri Revised Statutes (IJ at 1-2; Exh. 1 at Tab D; Exh. 1A). Based on this conviction, the Immigration Judge found that the respondent was removable as charged under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii) (2012), as an alien convicted of illicit trafficking in a controlled substance under section 101(a)(43)(B) of the Act, 8 U.S.C. § 1101(a)(43)(B) (IJ at 1-2; Exh. 1A).[1]

On appeal, the respondent challenges the Immigration Judge's decision to sustain the charge of removability under this provision (Respondent's Br. at 2-4). However, the respondent, through her prior counsel, conceded during her removal hearing that her conviction for a State drug offense was one for an "aggravated felony" and requested that proceedings be continued to allow her to

[1] The Immigration Judge also found that the respondent was removable as charged pursuant to section 237(a)(2)(A)(ii) of the Act, as an alien convicted of two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. However, in light of our disposition in this case, we need not address the respondent's challenge to the Immigration Judge's finding in this regard (Respondent's Br. at 4-6).

collaterally attack this conviction in State court (*see* Tr. at 6-8; DHS Br. at 2-4).[2] It is well settled that an admission made during an immigration hearing "by an attorney acting in his professional capacity binds his client," unless "egregious circumstances" are present. *Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986). The respondent does not argue that egregious circumstances were present such that her prior counsel's concession regarding her removability under section 237(a)(2)(A)(iii) should not be binding.[3] Accordingly, based on prior counsel's concession, the Immigration Judge properly sustained the charge of removability under section 237(a)(2)(A)(iii) of the Act (IJ at 1-2). *See* 8 C.F.R. § 1240.10(c) (providing that an Immigration Judge may conclude that an alien is removable as charged based on the alien's admissions and concessions).[4]

The respondent also argues that the Immigration Judge erred in denying her motion to continue her proceedings so that she could seek vacatur of her State drug conviction (IJ at 2-3; Tr. at 6-8; Respondent's Br. at 6-7). However, unless and until a State criminal court vacates the respondent's conviction because of a substantive or procedural defect in the underlying criminal proceeding, it remains valid for immigration purposes. *See, e.g.*, *Matter of Marquez Conde*, 27 I&N Dec. 251, 255 (BIA 2018). The respondent has not submitted evidence indicating that her State drug conviction has been vacated. Moreover, as noted, the respondent conceded that her State drug crime rendered her removable as an aggravated felon, and thus ineligible for the relief from removal she sought (IJ at 1-2; Tr. at 6-8; Exh. 3). Because the respondent has not shown that the Immigration Judge's discretionary decision to deny her request for a continuance affected the outcome of her case, we will affirm the Immigration Judge's decision in this regard (IJ at 2-3). *See Matter of Hashmi*, 24 I&N Dec. 785, 787 (BIA 2009) (recognizing "that an Immigration Judge's discretionary decision denying a continuance will not be reversed on appeal unless the respondent establishes that the denial caused him actual prejudice and harm, and it materially affected the outcome of his case"). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

[2] Counsel's concession in this regard was a reversal from the respondent's initial pleading that she was not removable as charged under this provision (*see* Tr. at 2-3; Exh. 3).

[3] Nor does the respondent's new counsel on appeal contend that the respondent's prior attorney provided ineffective assistance of counsel during the removal hearing. *See Singh v. Lynch*, 803 F.3d 988, 994 (8th Cir. 2015) (providing that, to prevail on a claim of ineffective assistance of counsel in removal proceedings, an alien must comply with the framework set forth in *Matter of Lozada*, 19 I&N Dec. 637, 638 (BIA 1988)).

[4] The Immigration Judge's finding regarding the respondent's removability is dispositive of her eligibility for cancellation of removal and voluntary departure, the only forms of relief she sought in her written pleadings (*see* Tr. at 7-8; Exh. 3). *See* section 240A(a)(3) of the Act, 8 U.S.C. § 1229b(a)(3); sections 240B(a)(1), (b)(1)(C) of the Act, 8 U.S.C. § 1229c(a)(1), (b)(1)(C).